



JAMES BRAINARD, MAYOR

March 9, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: PEG Discrimination in the City of Carmel, Indiana
Petitions for Declaratory Ruling Regarding Public, Educational and Governmental Access
Channels, MB Docket No. 09-13, CSR-8126 (ACM *et al.*),
CRS-8127 (City of Lansing, MI), and CSR-8128 (City of Dearborn, MI *et al.*) ("Petitions")

Dear Ms. Dortch:

The City of Carmel, Indiana ("Carmel" or the "City") has significant concerns and objections regarding AT&T's *denial* of public, educational, and governmental ("PEG") access channels to the City and its residents. AT&T not only seeks to implement inferior PEG offerings through its U-Verse product, but because of AT&T's actions, its Carmel customers are currently receiving no PEG content from the City while AT&T continues to otherwise operate. Through its own investigation into AT&T's acts, the City has discovered the above-captioned Petitions currently pending before the Commission. The City supports and strongly urges the Commission to grant all three of the Petitions. Rather than repeat the legal arguments in the petitions, we file to explain PEG's role in our community, highlight the complete gap in PEG programming currently caused by AT&T's actions, and reiterate the importance of preventing operators from inhibiting access to these channels.

1. Carmel, Indiana & PEG Programming.

Located just north of Indianapolis, Carmel is one of the fastest growing cities in Indiana and has been a leader in protecting local public interests. Carmel currently provides two PEG channels to its residents. One PEG channel broadcasts city council meetings, community news, and public safety programs. The link for this PEG channel is mms://sms7.omniproductions.net/carmel/cgc16. Carmel's other PEG channel is utilized for programming from the community's school system and broadcasts various school events, such as sporting events, choir, band, and orchestra performances. It also re-broadcasts the school's radio station with news and information scrolling at the bottom of the screen.

PEG programming in Carmel provides local residents with informational, public safety, educational, cultural and local opinion programming of uniquely local interest that they cannot obtain elsewhere.

2. AT&T's Denial of Carmel's PEG Channels

Although AT&T has been offering its U-Verse video service in Carmel for well over a year, AT&T continues to operate **without providing any** of the City's PEG broadcasts. The City was unwilling to enter into AT&T's standard PEG content transmission agreement because the City objected to AT&T's PEG offering for all of the reasons reflected in the FCC petition filed by ACM *et al.* in MB Docket No. 09-13, CSR-8126. To date, AT&T has been unwilling to negotiate an alternative solution to address the City's concerns. As a result, AT&T has never carried Carmel's PEG channels.

Carmel's incumbent cable operator (BrightHouse Networks) is still providing the City's PEG channels in a traditional analog format on Channel 16. It is unknown whether BrightHouse will seek to change the format or accessibility of Carmel's PEG channels in the future. While we do not face the problems caused by PEG digitization or by the Channel 99 platform with our incumbent cable operator yet, if the Commission were to endorse the actions of AT&T and Comcast at issue in this proceeding, we have every expectation that BrightHouse or other future video providers would adopt those approaches, which would marginalize or effectively eliminate PEG access.

3. The Commission Should Grant the Petitions Concerning AT&T's PEG Product (CSR-8126 & CSR-8127)

Our experience confirms many of the deficiencies identified in the petitions. In virtually every conceivable way that matters to a viewer and the City, the AT&T PEG product is markedly inferior to broadcast channels carried on AT&T's U-verse system: ease of finding in the menu system, ease of access, the time it takes to reach the PEG programming, the ability to switch back and forth between local PEG programming and other channels, ability to record using DVR, closed captioning capability, and secondary audio ("SAP") capability.

Accordingly, to preserve PEG as envisioned in the Cable Act, the Commission should grant the petitions in CSR-8126 and CSR-8127.

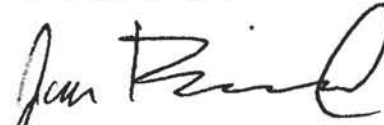
Conclusion.

Carmel's PEG channels are a critical and irreplaceable resource for our community. We rely upon our PEG channels to convey important public information throughout our community. PEG channels are the key medium of communication for our local government to communicate with residents, for local educational institutions to communicate with our residents, and for residents to communicate among themselves and to watch and participate in a dialogue about our community. If the channels are less accessible for technical reasons, the PEG channels would become a much less effective avenue for community communications, and some subscribers we now reach would not receive the information at all. In light of the decreasing amount of truly local programming available on broadcast and other commercial channels, PEG is the only full-time, genuinely local source of television programming available to our residents.

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Equally important, AT&T's actions have created a situation where, should a city refuse to concede to AT&T's demands to force its inferior PEG product by agreement, AT&T operates without providing any PEG programming – a complete gap in PEG service that simply is not permitted under the Cable Act. We therefore strongly urge the Commission to grant all three petitions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James Brainard", written in a cursive style.

James Brainard
Mayor of Carmel, Indiana

cc: James N. Horwood
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